



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

August 8, 1952

Hon. Coke R. Stevenson, Jr.  
Administrator  
Texas Liquor Control Board  
Austin, Texas

Opinion No. V-1503

Re: Legality of a Class B  
Wholesaler's transport-  
ing ale in a motor ve-  
hicle which he holds as  
lessee under a year-to-  
year lease.

Dear Mr. Stevenson:

In your letter requesting an opinion of this office you state that you are concerned with Paragraph (13), Section 15, of the Texas Liquor Control Act (Art. 666-15, V.P.C.). Specifically, you ask whether a Class B Wholesaler can transport ale in trucks which he holds as lessee on a year-to-year lease with an option to purchase or an agreement to purchase on demand of the lessor, in view of the above mentioned paragraph of the Liquor Control Act.

Paragraph (13) of Article 666-15, V.P.C., reads in part:

"Private Carrier Permit. Brewers, distillers, wineries, rectifiers, wholesalers, Class B Wholesalers, and Wine Bottlers Permittees shall be entitled to transport liquor from the place of sale or distribution to the purchaser, upon vehicles owned in good faith by such permittees when such transportation is for a lawful purpose; . . ." (Emphasis ours throughout.)

Paragraph (5) of Article 666-3a, V.P.C., reads:

"'Liquor' shall mean any alcoholic beverage containing alcohol in excess of four (4) per centum by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila,

Hon. Coke R. Stevenson, Jr., page 2, (V-1503)

mescal, habanero or barreteage, shall be prima-facie evidence that the same is liquor as herein defined."

It is contended by the lessor of the trucks in question that the definition of "owner" as set out in Section 10, Subdivision (d), of Article 670ld, V.C.S., controls the question here involved.

Section 10, Subdivision (d), Article 670ld, reads:

"Owner. A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Act."

"This Act" referred to above is clearly Article 670ld, V.C.S., entitled "Uniform Act Regulating Traffic on Highways." Nothing in the act indicates a legislative intent to extend this definition to any statutes other than to Article 670ld.

For an answer to your question we must look not to the meaning of the word "owner" in Article 670ld but to the meaning intended by the Legislature in the particular statute under consideration, Article 666-15, V.P.C. Here the term "owner in good faith" is used.

The verb "owned" has been used in the sense of a good legal title. Miller-Link Lumber Co. v. Stephenson, 265 S.W. 215, 220 (Tex. Civ. App. 1924, Aff'd, Tex. Comm. App., 277 S.W. 1039), wherein the court said:

" . . . to own means to hold as property, to have a legal or rightful title to. 21 A. & E. Evey. Law (2d Ed.) 1025. to have a good and legal title to. 29 Cyc 1548, 1549. An owner is defined: 'one who owns; a proprietor; one who has the legal or rightful title: Webster, 'one who has dominion of a thing, real or personal, corporeal or incorporeal, which he has the right

to enjoy and do with as he pleases, either to spoil or destroy it as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right."

We recognize that the term "owner" is often construed to include one holding property under lease. Atty. Gen. Op. V-1497 (1952). The construction depends upon the context and purposes of the statute in which the term is used.

It is our belief the words "owned in good faith by" were used in Paragraph 13 of Article 666-15 of the Texas Liquor Control Act in the sense of an absolute and unqualified legal title. In Paragraph (g) of Article 667-23 $\frac{1}{4}$  of the Liquor Control Act, a section similar to Paragraph 13 of Article 666-15 but applying to the transportation of "beer", the words "or leased" immediately follow the word owned, while these words are conspicuously omitted from Paragraph 13 of Article 666-15.

Paragraph 13 of Article 666-15 reads in part:

" . . . upon vehicles owned in good faith by such permittees . . ."

Paragraph (g) of Article 667-23 $\frac{1}{4}$  reads in part:

" . . . in vehicles owned or leased in good faith by him."

The Legislature having limited the transportation in Article 666-15 to "vehicles owned in good faith" while expressly authorizing the use of "leased" vehicles in Article 667-23 $\frac{1}{4}$  clearly indicates a legislative intent to require permittees under the former section to have absolute legal title in vehicles used for transporting liquor. This is in accord with well established rules of statutory construction. 2 Sutherland Statutory Construction (3rd Ed. 1943) 414.

#### SUMMARY

A Class B Wholesaler cannot transport ale from the place of sale or distribution to the purchaser upon a motor vehicle which he holds as a lessee under a year-to-year lease with an

Hon. Coke R. Stevenson, Jr., page 4, (V-1503)

option to purchase or agreement to purchase on demand of the lessor. To do so would violate Article 666-15, V.P.C., which restricts a Class B Wholesaler transporting ale to "vehicles owned in good faith by such permittees."

Yours very truly,

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